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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,200	06/25/2003	Missoum Moumene	101896-175	4354

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EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 01/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,200

Applicant(s)

MOUMENE ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Applicant's election without traverse of species (the embodiment illustrated in Figures 8A-D and Figures 9 and 10 (right side)) in the reply filed on 11/02/05 is acknowledged. The examiner agrees with applicant; therefore, applicant's election of claims 15-39 will be considered for examination.

Double Patenting

Again the examiner agrees with applicant's argument that the pending claims 15-39 are not patentably indistinct from claims 1-15 of the prior patent. The Double Patenting rejection of the claims in the last Office Action is vacated.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims s 15-19, 21-26, 28-31, 33-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Yuan et al. (6,565,565).

With respect to claims 15, 28, Yuan et al disclose an anchor assembly fro securing a fixation element comprising an anchor (222) having an open slot (227), side walls on opposed sides of the open slot, a proximal portion, distal portion, and an anchor flange segment extending from each of the side walls in a direction toward the

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central longitudinal axis, (FIG.13) , the anchor flange segments each including an inferior contact surface (FIGS.13-16) extending in a direction toward the central longitudinal axis and toward the distal portion to define a radial slant; and a closure element (220)for closing the open slot and applying pressure to the fixation element to capture the fixation element within the open slot, the closure element including a closure body and a plurality of closure flange segments (284,286) extending from the closure body in a direction that is transverse to the anchor element central longitudinal axis when the closure element is placed in the open slot each closure flange including a superior contact surface extending in a direction away from the central longitudinal axis when the closure element is placed in the open slot so that the closure flange segment superior surface engage the anchor element flange segment inferior surfaces over a contact area when the closure elements is placed in a closed position in the anchor element open slot; as set forth in column 9, lines 9-67, column 10, lines 1-55; wherein the closure flange segments further include exterior surfaces that extend away from the longitudinal axis and proximally when the closure element is placed in the open slot to provide a partial cone shaped outer surface to the closure flanges; as best seen in FIGS.12-16; wherein the radial slant is configured to cause sliding of the anchor flange segment inferior surfaces with respect to the closure flange segment superior surfaces upon pressure being applied on the fixation elements; as set forth in column 10, lines 1-67, column 11 lines 1-67

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With respect to claims 1-19, 21-26, 2931, 33-38, Yuan et al., disclose all the limitations, as set forth in column 9, lines 9-67, column 10, lines 1-67, column 11, lines 1-67; and as best seen in FIGS.12-16.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20,32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan et al (6,565,565).

With respect to claims 20 and 32, Although Yuan et al teach of a radial slant, it is noted that Yuan et al did not teach of a 45 degrees slant, as claimed by applicant. However, to one of ordinary skill in the art reaching an angle of 45 degrees would have been obvious, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only routine skill in the art. In re Aller 105 USPQ 233.

Claims 27,39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan et al (6,565,565) in view of Schlapfer et al (6,007,262).

With respect to claims 27, 39, it is noted that Yuan et al did teach all the limitations, except for a clamping member being a screw; as claimed by applicant. However, in a similar art, Schlapfer et al evidence the use of a clamping member being screw for securing the closure to the anchor.

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Therefore, given the teaching of Schlapfer et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a screw, as taught by Schlapfer et al, to secure the closure to the anchor.

Response to Amendment

Applicant's arguments, see Remark, filed 11/02/05, with respect to the rejection(s) of claim(s) 28,31 under 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Yuan et al. Furthermore, Since Yuan et al teach of a radial slant, arriving at an optimum range would have been obvious.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

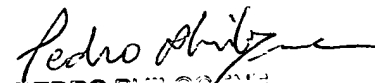
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
January 06, 2005



PEDRO PHILOGENE
PRIMARY EXAMINER